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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Calaveras)

PAUL EMIL RICH,

Plaintiff and Appellant,

v.

KIM COCKSHOTT,

Defendant and Respondent.

C081194

(Super. Ct. No. 11CV37734)

Plaintiff Paul Emil Rich sued defendant Kim Cockshott for abuse of process and fraud. Plaintiff alleged defendant lied to police after plaintiff collided with defendant's trucks. The trial court ultimately sustained defendant's demurrer without leave to amend. Plaintiff now appeals, contending the trial court erred in concluding defendant's statements to investigating officers were absolutely privileged under Civil Code section 47.¹

We affirm.

¹ Undesignated statutory references are to the Civil Code.

FACTUAL AND PROCEDURAL BACKGROUND

In 2009, plaintiff pleaded guilty to attempted criminal threats (Pen. Code, §§ 664/422), driving under the influence (Veh. Code, § 23152), and driving on a suspended license (Veh. Code, § 14601.2) all connected to the incident involving the collision. Attached to plaintiff's plea sheet was a "*People v. West* statement," stating that he was pleading to something he felt he did not do, but was doing so because he felt it was to his tactical advantage.²

Two years later, plaintiff sued defendant for false imprisonment, abuse of process, fraud, and misrepresentation. Following several demurrers, plaintiff filed a second amended complaint, alleging abuse of process and fraud.

The second amended complaint alleged that defendant "called the authorities . . . and purposefully misled officers by fabricating stories of the accident and failed to disclose the actual circumstances of the accident" It explained plaintiff "collided with [d]efendant's vehicles not because he was intoxicated but because of the snow." Defendant knew plaintiff was leaving and would return, but instead defendant called the police. "Defendant's conduct directly resulted in [p]laintiff's arrest, subsequent trial, incarceration, [and] physical injuries" Further, defendant, "knew [plaintiff] would be arrested, knew he would likely drink alcohol in the privacy of his own home, knew the officers accusing [p]laintiff would likely irritate and anger . . . [p]laintiff, that [p]laintiff would not have the financial wherewithal to fight the charges and would suffer catastrophic damages."

The trial court sustained defendant's demurrer to the second amended complaint without leave to amend and entered judgment for defendant. The ruling relied in part on the fact that section 47 provides immunity for defendant's statements to police.

² *People v. West* (1970) 3 Cal.App.3d 595; see also *North Carolina v. Alford* (1970) 400 U.S. 25, 37 [27 L.Ed.2d 162].

DISCUSSION

On appeal, plaintiff contends he was denied his civil right to a trial. He argues defendant intentionally made a false and malicious statement to police regarding the collision. According to plaintiff, section 47 does not immunize defendant from suit because section 47 does not apply to statements made with malice. We disagree.

Section 47 establishes an absolute privilege barring tort liability for certain communications, including statements made with malice. (*Hagberg v. California Federal Bank* (2004) 32 Cal.4th 350, 360, 364 (*Hagberg*); § 47.) The privilege covers communications made “in the initiation or course of any . . . proceeding authorized by law” (*Ibid.*)

Statements reporting suspected criminal activity to law enforcement personnel are considered “at least preparatory to ‘any . . . official proceeding authorized by law,’” and thus are absolutely privileged. (*Hagberg, supra*, 32 Cal.4th at p. 364 [“the overwhelming majority of cases conclude that when a citizen contacts law enforcement personnel to report suspected criminal activity and to instigate law enforcement personnel to respond, the communication . . . enjoys an unqualified privilege under section 47(b)”].) This absolute privilege ensures free access to the courts and other official proceedings and “ ‘ “assure[s] utmost freedom of communication between citizens and *public authorities* whose responsibility is to investigate and remedy wrongdoing.” ’ ” (*Hagberg* at p. 364.)

Plaintiff asserts that *Hagberg* “is not on point,” but he provides no explanation. Appellate courts may properly disregard contentions perfunctorily asserted without legal development, and we do so here. (See *People v. Barnett* (1998) 17 Cal.4th 1044, 1182 [the failure to support claim with adequate argument forfeits the claim as not properly raised]; *Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99 [“Issues do not have a life of their own: if they are not raised or supported by argument or citation to authority, we consider the issues waived”].)

Plaintiff also points to the dissent in *Hagberg*, which indeed urged that reports to police should be subject to only a qualified privilege and invited the Legislature to so amend the statute. But while the Legislature has amended section 47 in the 15 years after *Hagberg*, it has never done so to make reports of suspected criminal activity to law enforcement a qualified privilege. (See *People v. Anderson* (2002) 28 Cal.4th 767, 780 [“ ‘where the Legislature amends a statute without altering a consistent and long-standing judicial interpretation of its operative language, courts generally indulge in a presumption that the Legislature has ratified that interpretation’ ”].)

Finally, plaintiff points to Restatement Second of Torts, section 682, which provides: “One who uses a legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it is not designed, is subject to liability to the other for harm caused by the abuse of process.” (Restatement (Second) of Torts § 682 (1977).) While often entitled to great consideration, restatements are not binding. (*Brady v. Calsol, Inc.* (2015) 241 Cal.App.4th 1212, 1225.) Our high court’s decision in *Hagberg*, by contrast, is both binding and dispositive. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455-456.)

The trial court properly sustained the demurrer without leave to amend.

DISPOSITION

The judgment is affirmed. Defendant shall recover costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

/s/
MURRAY, J.

We concur:

RAYE, P. J.

/s/
BLEASE, J.